



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for cause and other issues.

The tenant and landlords' agents (the landlord) attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The landlord provided a copy of the tenancy agreement in documentary evidence which provided the following information: This tenancy started on June 01, 2012 for an initial fixed term of six months thereafter reverting to a month to month tenancy.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) on June 27, 2016 by posting it to the tenant's door. The Notice is deemed to have been served three days later on June 30, 2016. A copy of the Notice has been provided in documentary evidence by the landlord and shows that the Notice has an effective date of July 31, 2016. The Notice provides the following reasons to end the tenancy:

1) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord requests that the Notice is upheld and seeks an Order of Possession.

The tenant filed his application to dispute the Notice on July 20, 2016 and made necessary amendments on July 21, 2016. The tenant was asked if he had any extraordinary, serious or compelling reasons why he did not file his application within the 10 allowable days. The tenant testified that he did not know he only had 10 days and the building manager said if he cleared his unit up he could stay. The building manager inspected his unit and said he could stay but then other issues came up and then the building manager said the tenant had to apply to cancel the Notice.

The landlord testified that the tenant was insistent that he wanted to stay but was told that the landlord was not going to extend his tenancy and that he should go to RTB and look at his options. The last conversation the landlords had with the tenant after they inspected his unit was that the Notice still stands.

The landlord requested an assurance from the tenant that he would vacate the unit at the end of September, 2016 and the landlord would then request this as the effective date of an Order of Possession. The tenant agreed he would vacate on September 30, 2016.

Analysis

I accept that the landlord served the tenant with a One Month Notice to End Tenancy on June 27, 2016 by posting the Notice to the door of the rental unit. The Notice was deemed served three days later on June 30, 2016. Therefore the tenant had 10 days from June 30, 2016 or until July 10, 2016 to file an application to dispute the Notice. The tenant filed his application on July 20, 2016 which was 20 days after being deemed to have received the Notice.

Section 66(1) of the *Residential Tenancy Act* states:

Director's orders: changing time limits, and provides in part as follows:

66 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].*

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part: The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Consequently, I find that the tenant provided no reasons for the late filing of their application, other than the reason that the landlord said he could stay if he cleaned his unit which the landlord disputed. Therefore, the tenant has insufficient reason to file his application late and does not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice I must dismiss the tenant's application to set aside the Notice.

Page two of the Notice also explains this to the tenant and states "If you do not file an application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of the Notice. If you do not move or vacate the landlord can apply for an Order of Possession that is enforceable through the Court".

Section 55(1) of the *Act* states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*

(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

On the basis of this, as I have dismissed the tenant's application I am not required to consider the reasons given on the Notice and I grant the landlord an Order of

Possession pursuant to s. 55 of the *Act*. As the effective date of the Notice has since passed I have issued an Order of Possession effective as requested on September 30, 2016.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause dated June 27, 2016 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **September 30, 2016**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 09, 2016

Residential Tenancy Branch